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## Seth H. Young v. Richard Saunders : Brief of Respondent

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# IN THE SUPREME COURT OF THE STATE OF UTAH

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SETH H. YOUNG,

*Plaintiff and Respondent,*

vs.

RICHARD SAUNDERS,

*Defendant and Appellant.*

Case No.  
11868

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## BRIEF OF RESPONDENT

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Appeal from Judgment of  
Second District Court of Weber County, Utah  
Honorable John F. Wahlquist, Judge

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*Defendant and Appellant.*

} Case No.  
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## BRIEF OF RESPONDENT

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### NATURE OF THE CASE

This is an action by the plaintiff-respondent to obtain possession of a boat owned by him which was wrongfully taken and retained by the defendant-appellant.

### DISPOSITION IN LOWER COURT

The lower court found the plaintiff-respondent was the owner of the boat and entitled to immediate possession thereof.

## RELIEF SOUGHT ON APPEAL

Respondent seeks an order of this Court upholding the decision of the trial court.

## STATEMENT OF FACTS

The statement of facts as outlined by the Appellant on pages 2 and 3 of his brief are misleading and in many places not supported by the evidence. The statement of facts as found by the trial judge pages 68, 69 and 70 of the transcript are amply supported by the evidence and are essentially as follows:

The Defendant-Appellant did undertake to borrow the sum of \$1500.00 from First Security Bank, using the boat as security, (Tr. pp. 31 and 39.) The title of the boat was taken strictly as a security device (Tr. p. 39.) The Bill of Sale specifically sets out consideration in the sum of \$1500.00 not \$2000.00 (R. 17.) Sam Arge and the motor club organizations were in difficult financial straits and were unable to borrow the money needed in their own names.

No financing statement was filed by Mr. Saunders showing the boat as security on an obligation to Mr. Saunders on any of the motor club organizations, Mr. Sam Arge or his son Kenneth (R. 17.) The First Security Bank did file a financing statement with the Secretary of State showing Richard Saunders as debtor with a boat pledged as security (R. 17.) Sam Arge was in fact the owner of the boat and caused the same to be

conveyed to the Plaintiff-Respondent through the then registered owner, Kenneth Arge, on his behalf, (Tr. pp. 8, 9, 10, 22, 26, 39, 50, 62 and 63.)

The boat was not a "gift" to Mr. Young but was rather part of the consideration in resolving a complicated loan and security arrangement between them (Tr. pp. 6, 7, 8, 15, and 16.)

Mr. Young tried to protect himself against any difficulty by establishing that there were no problems in connection with the title of the boat by checking with the Secretary of State (Tr. p. 7), by specifically asking Mr. Sam Arge and Mr. Kenneth Arge if there were any liens against the boat (Tr. p. 21), and when Mr. Saunders advised Mr. Young that a local marine repair shop may possibly be claiming a lien against the boat, Mr. Young specifically inquired of the defendant's own attorney who assured him there was no problem and that the repair bills did not constitute a lien against the boat (Tr. pp. 11 and 12.)

Mr. Young was not aware that Mr. Saunders had, claimed or might claim any interest as to title, ownership or security in the boat either prior to his taking title to the boat or, subsequent thereto, prior to his conclusion of the transactions with Mr. Arge and the motor clubs, nor thereafter until such time as the boat was removed from his property the following spring (Tr. pp. 7, 10, 11, 12, 13, 14, 21, 39, 41 and 45.)

## ARGUMENT

### POINT I

THE TRIAL COURT WAS CORRECT IN ITS RULING THAT THE PLAINTIFF WAS THE OWNER OF THE BOAT AND ENTITLED TO IMMEDIATE POSSESSION THEREOF.

Section 70A-9-301 Utah Code Annotated 1953 as amended commonly referred to as the 'Uniform Commercial Code', specifically provides as follows:

**70A-9-301.** Persons who take priority over unperfected security interests — "Lien creditor." — (1) *Except as otherwise provided in subsection (2), an unperfected security interest is subordinate to the rights of*

- (a) persons entitled to priority under section 70A-9-312;
- (b) a person who becomes a lien creditor without knowledge of the security interest and before it is perfected;
- (c) In the case of goods, instruments, documents, and chattel paper, a person who is not a secured party and who is a transferee in bulk or other *buyer not in ordinary course of business to the extent that he gives value and receives delivery of the collateral without knowledge of the security interest and before it is perfected;*

In this particular case Mr. Saunders did not perfect his security interest in the boat. The fact that the

bank filed a financing statement showing Mr. Saunders as having borrowed money on the boat is irrelevant to this action since the bank is not a party to the action and is making no claim to any interest in the boat having been paid in full on its note (Tr. p. 37.)

If the bank were a party, the financing statement filed by it against the name of Richard Saunders would place no one on notice upon a review of the record unless that person knew in fact that Richard Saunders had obtained a security interest from Sam Arge or some other person or organization relating to him. If the Bank were making a claim against the boat, justice would require that the Uniform Commercial Code be interpreted so as to protect an innocent buyer without knowledge against such hidden transactions. To hold otherwise would open the door to fraud and subterfuge through which any person desiring to borrow money could do so through a third party while retaining possession in himself and then proceed to deceive any subsequent party who would be unable to uncover the hidden transaction and so be stripped of the protection intended for him by the provisions of the Uniform Commercial Code.

The boat in the present case remained in the possession of Sam Arge and his family and the title of the boat given to Mr. Saunders was a security arrangement designed to veil him with a phantom title so as to induce the bank to make the loan to Mr. Saunders and nothing more.



The Utah Supreme Court has repeatedly held that findings of the Trial Court will not be overturned or reversed unless clearly contrary to the evidence and that the evidence on review must be viewed by the court in a light most favorable to the holding of the Trial Court. *McCullum vs. Clothier*, 241 P2d 468, 121 U. 311 (1952); *Buckley vs. Cox*, 247 P2d 277, 122 U. 151 (1952).

In the present case the court's findings, as detailed on pages 68, 69 and 70 of the transcript, are supported by the evidence presented at trial.

Every payment made on the financing of the boat with Continental Bank was paid by the corporation and charged directly against the draw of Mr. Sam Arge. This is testified to by plaintiff's witness Joseph Anderson on page 26 of the transcript and also by the defendant's witness, Mr. Harry Stout (Tr. p. 50.)

Mr. Arge did not differentiate between his property and the property of the various corporate entities through which he dealt (Tr. pp. 29, 62 and 63.)

If a Bill of Sale was given to one of the motor clubs, Mr. Stout testified on page 67 of the transcript that this was a transaction similar to that in which the title was transferred to Mr. Saunders to obtain a loan and was a security device only. Further the boat was always registered in the name of either Sam Arge or subsequently his son, Kenneth Arge, (Tr. pp. 8 and 9), and the taxes in 1967 while the boat was registered in

the name of Kenneth Arge were paid by Kenneth Arge (Tr. p. 10.)

There is ample evidence to support the court's finding that the boat was transferred to Mr. Young as part of the consideration for satisfaction of an obligation due and owing to Mr. Young. In concluding the complicated security transaction Mr. Young gave up among other things the "Marion Davis bracelet" which he had held as security along with other items and which was itself worth more than all of the obligations owed to him by Mr. Arge and the corporate organizations (Tr. p. 7.)

The isolated statement, taken out of context by appellant at page 3 of his brief, is obviously just that, a statement out of context, and does not alter the clear import of the express testimony as set forth in the transcript on pages 6, 7, 8, 15 and 16 and the court's finding that the boat was part of the consideration in the involved transaction should not be disturbed.

Mr. Young attempted to take advantage of the protection afforded a potential purchaser by the Uniform Commercial Code and was advised by the Secretary of State that there was no financing statement filed on the boat. He specifically asked Mr. Arge and his son if there were any liens against the boat and was advised there were not (Tr. p. 21.)

He had a particular conversation with Mr. Saunders relative to the boat at which time Mr. Saunders

knew that he, Mr. Saunders, had a Bill of Sale to the boat which fact he did not divulge to Mr. Young (Tr. pp. 41 and 45.)

The corporation owed Mr. Saunders on an outstanding obligation and Mr. Saunders was aware of the pressures which Mr. Young could place upon the corporation which was already in difficult financial circumstances. Thus he was in a position where it was advantageous to himself, as well as the corporation, in which he had other interests and of which he was either at the time or shortly thereafter president, to clear the corporation of its obligation to Mr. Young, an accomplishment which would be hampered if he divulged to Mr. Young the fact that he claimed a security interest in the boat which he knew Mr. Young was accepting as part of the consideration in the transaction.

The evidence further supports the court's finding that Mr. Young did not in fact become aware of and did not know that Mr. Saunders had a security interest in the boat. The only point of warning made by Mr. Saunders was that certain parties who had made repairs on the boat may be searching for it under claim of lien. Mr. Young immediately stated he did not want to take on more problems and that he did not want the boat if it meant problems and was at the time specifically advised by the appellant's own attorney who entered the conversation at that point that there was no problem with regard to the bills as they did not constitute a lien against the boat (Tr. pp. 11 and 12.)

We are left in a position where Mr. Saunders who knew he had obligated himself to First Security Bank with the boat as security concealed this fact from Mr. Young and knowing Mr. Young was giving up his rights as against Sam Arge and the corporate structures in concluding the transactions in which he knew the boat was part of the consideration and having specifically failed to record his security interest permitted Mr. Young to take the boat without placing him on notice. In fact thereafter Mr. Saunders did not contact Mr. Young and advise him of a security interest in the boat but rather had the boat removed from Mr. Young's possession and then with full knowledge of the above facts Mr. Saunders notified everyone except Mr. Young that he had picked up the boat and did not notify him until a later date after Mr. Young had reported the boat as missing (Tr. p 47.) This was an obvious attempt to evade the one party who he clearly understood to be the owner of the boat.

The court found on page 70 that Mr. Saunders

knowing that the boat was actually in the possession of Mr. Young nevertheless removed it from Mr. Young's possession where it had been stored and transferred it to his own possession trusting in the general complication of the situation to protect his equity.

This finding is well supported by the evidence.

The fact that Sam Arge completed the transfer of the boat by directing his son the then registered owner

to make out the Bill of Sale is not important since he obviously had the right to deal with the boat as he saw fit. His son, Kenneth, recognized this right and upon instruction from his father, executed the Bill of Sale. Mr. Sam Arge has never contested the validity of the Bill of Sale nor raised any questions relating thereto. The registration of the boat in the boy's name was either an additional subterfuge to protect his father's assets, or there existed between father and son an arrangement, agreement or obligation by which the father could direct disposition of the boat for his own interest. The exact details of such arrangements between father and son are immaterial. The fact of the matter is that Sam Arge told Mr. Young he could deliver the boat as part of the consideration and this he did.

## CONCLUSION

The findings of the Trial Court are amply supported by the evidence and the ruling of the Trial Court should be sustained. The Plaintiff is the owner of the boat and is entitled to immediate possession thereof. The Defendant who has been permitted to retain possession of the boat throughout this proceeding should be ordered to return it to the Plaintiff forthwith.

RESPECTFULLY SUBMITTED,

E. Earl Greenwood, Jr.,  
Jay A. Meservy.